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APPEAL BRIEF - PATENTS

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: E.M. Theisen et al. Attorney Docket No. GLEI114873
Application No: 09/636,108 Group Art Unit: 2645
Filed: August 10, 2000 Examiner: M. Chow
Title: VOICEMAIL MESSAGE REPOSITIONING DEVICE

APPEAL BRIEF

Seattle, Washington

January 14, 2004

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TO THE COMMISSIONER FOR PATENTS:

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This is an appeal from the final rejection of April 15, 2003, of Claims 1-32. This Appeal Brief is submitted in support of the Notice of Appeal filed August 15, 2003, the period for the filing of an Appeal Brief having been extended for three (3) months from October 15, 2003 to January 15, 2003.

I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the present application, namely Glenayre Electronics, Inc. It is noted that the assignment to Glenayre Electronics, Inc. is recorded with the USPTO at reel number 011381, frame number 0817. The real party in interest is hereinafter referred to as the "Appellant."

II. RELATED APPEALS AND INTERFERENCES

Appellant respectfully submits that no other Appeals or Interference are known to the Appellant, Appellant's legal representative, or the applicants of the present application, which would directly affect or be directly affected by, or have a bearing on the Board of Patent Appeals and Interferences' ("the Board") decision in the pending appeal.

III. STATUS OF THE CLAIMS

Appellant submits that Claims 1-32 are pending in the instant application. Claims 1 and 17 are independent claims. A complete copy of the pending Claims 1-32 is provided in the Appendix of the Claims attached hereto.

Although Claims 1-32 are indicated as being rejected in the final rejection dated April 15, 2003, the Examiner has failed to establish a basis for rejecting any of the independent claims or their associated dependent claims. Accordingly, Appellant believes these claims are allowable.

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IV. STATUS OF AMENDMENTS

Appellant filed a response after final on July 10, 2003. In the Advisory Action dated July 18, 2003, the Examiner indicated the response filed July 10, 2003 will be entered for the purposes of appeal. The Board is respectfully requested to refer to item 7 of the indicated Advisory Action.

V. SUMMARY OF THE INVENTION

Communication service providers typically include conventional voicemail systems that store voice messages for retrieval and playback by a telephone user or subscriber. Generally, these systems include fast-forward and rewind features for skipping or replaying selected portions of a message during playback. In order to accomplish these repositioning functions, the user typically presses a specialized key on the voicemail instrument, thereby "moving the message by some arbitrary amount." Unfortunately, conventional repositioning of voice messages has proven to be cumbersome, as it is difficult to begin playback of a voice message at a desired point once the repositioning function is terminated by the user. This is because it is difficult to gauge the progress of repositioning while the process is occurring.

An exemplary embodiment of the present invention is generally illustrated in FIGURE 1 of the instant application. As is illustrated in the figure, a voicemail system 12 may include a memory 16 that stores digitized incoming voice messages for later playback. The memory 16 also includes a voicemail repositioning application 18. (See page 4, first two full paragraphs of the specification.) The functionality of the voicemail repositioning application 18 will be discussed hereinafter.

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The memory 16 is interfaced with a processor 14, which includes an interface component 20, a recording component 22 and a playback component 24. The voicemail system 12, made up of generally the processor 14 and the memory 16, is interfaced with a phone 10. (See page 4, second full paragraph of the specification.)

The recording and playback components 22 and 24 are capable of recording, retrieving and playing of voice messages. Playback of voice messages may include message repositioning functions that may be used during fast-forwarding and rewinding of voice messages. (See page 4, lines 30-32 of the specification.) These repositioning functions, such as audio cues, visual alerts, or vibratory alerts, are provided to give feedback to the user during the process of repositioning a voice message. (See page 5, lines 15-17 of the specification.)

FIGURE 2 of the instant application shows a flowchart illustrating the steps of a rewinding method of a voice message in accordance with an exemplary embodiment of the present invention. As is illustrated in the figure, step 32 begins the "repositioning effect" in accordance with the exemplary embodiment (see page 5, lines 10-11 of the specification). During the rewinding of the message, at a fixed or arbitrary size decrement, supervisory signals are played back to the user so that the user is informed of the progress of the rewind. As was indicated previously, these supervisory signals may be audio, visual, or vibratory. (See page 4, lines 13-17 of the specification.) In accordance with the exemplary embodiment, the user may issue the command to start the rewinding process with either a voice command or by pushing a key, or by way of some other mechanism on the telephone. (See page 5, lines 7-8.)

The voicemail system 12, during the repositioning process, tests for the receipt of a stop rewind command at step 34. (See page 5, lines 31-32 of the specification.) As was indicated heretofore, the stop or wind command can be initiated by the user by way of the telephone. Once

the stop command is received, the system 12, at step 36, stops the rewinding process and plays the repositioned voice message starting at the rewind point. (See page 5, lines 33-35.)

An exemplary embodiment of the present invention, shown in FIGURE 3 in flowchart form, is capable of repositioning a voice message during a fast-forwarding process. The steps in repositioning a voice message during a fast-forwarding process are similar to those as illustrated in the exemplary embodiment of FIGURE 2. Specifically, in step 52, the system 12, during a fast-forwarding process, provides supervisory signals to the user. Similar to the repositioning process during the rewinding of a voice message, these supervisory signals may be audio, visual, or vibratory.

At step 54, the system 12 tests for receipt of a stop forwarding command. Once the stop forwarding command is issued, in step 56, the system 12 stops the fast-forwarding and plays the voice message from the fast-forwarded point. (See page 6, lines 14-16 of the specification.)

Similar to the repositioning process during rewinding, the supervisory signal may operate at fixed intervals, or at adjusted intervals based on the length or size of the voice message. (See page 5, lines 18-27 of the specification.)

In accordance with the exemplary embodiments of the present invention, by providing supervisory signal feedback to the user, the user may in a time-saving fashion, reposition for playback one or more voice messages.

VI. ISSUES PRESENTED FOR REVIEW

A. Whether Claims 1-3, 5, 7, 11, 14-16, 17-19, 21, 23, 27 and 30-32 are rendered unpatentable under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,568,540 to Greco et al.

The Examiner asserts:

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Regarding Claims 1 and 7, the Examiner asserts Greco et al. include inherent disclosure that a start command may be communicated from a telephone. (See page 3, first incomplete paragraph of the final Office Action dated April 15, 2003.) Furthermore, the Examiner asserts that the personal computer disclosed in Greco et al. is deemed "a telephone." (See page 2 of the Advisory Action dated July 18, 2003.)

B. Whether Claims 6 and 22 are rendered unpatentable under 35 U.S.C. § 103(a) over U.S. patent to Greco et al. in view of U.S. Patent No. 6,232,887 to Carson.

The Examiner asserts:

Regarding Claims 6 and 22, the Examiner asserts that Greco et al. teach that which is indicated hereinabove with respect to independent Claims 1 and 17, but fails to teach a supervisory signal that is a vibratory signal.

However, the Examiner asserts that Carson teaches a vibrating signal. (See col. 9, line 4 of the relied upon Carson patent document.)

Therefore, the Examiner asserts that it would have been "obvious to one skilled at the time the invention was made to modify Greco et al. to have the supervisory signal as a vibratory signal as taught by Carson such that the modified system of Greco et al would be able to support the vibratory signal to the system users."

C. Whether Claims 8-10 and 24-26 are rendered unpatentable under 35 U.S.C. § 103(a) over the Greco et al. patent in view of U.S. Patent No. 6,408,068 to Larson et al.

The Examiner asserts:

Regarding Claims 8 and 24, the Examiner asserts that Greco et al. teach that which is discussed in conjunction with Claims 1 and 17. However, the Examiner indicates that Greco et al. fail to teach a supervisory signal that operates at variable intervals.

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Therefore, the Examiner has relied upon Larson et al. in order to attempt to make up for the deficiencies of Greco et al. In particular, the Examiner asserts that a variable flash rate is used to indicate the operation of a voicemail system. (See col. 6, lines 52-65 of the relied-upon patent document to Larson et al.)

Thus, the Examiner asserts that it would have been "obvious to one skilled in the art at the time the invention was made to modify Greco et al to have a supervisory signal that operates at variable intervals," as is assertedly taught by Larson et al. The Examiner asserts that such a modified system of Greco et al. "would be able to support the use of variable intervals to system users." (See page 6, first full paragraph of the final Office Action dated April 15, 2003.)

VII. GROUPING OF CLAIMS

Appellant respectfully requests that the claims be grouped as follows:

Group 1: Claims 1-5, 7, 11-21, 23 and 27-32;

Group 2: Claims 6 and 22; and

Group 3: Claims 8-10 and 24-26.

VIII. ARGUMENTS

A. 35 U.S.C. § 102(d) Greco et al. Rejection

1. Claims 1-5, 7, 11-21, 23 and 27-32

To establish a proper rejection under 35 U.S.C. § 102(d), "a claim is anticipated only if each and every element is set forth in the claim as found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (February 2003). Section 2131 of the M.P.E.P. further states that, "the identical invention must be shown in as complete detail as is contained in the . . . claim." *See, Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913,

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1920 (Fed. Cir. 1989) (emphasis added). As described in more detail hereinbelow, Appellant respectfully submits that the rejection under 35 U.S.C. § 102(d) cannot be appropriately applied to the indicated claims, because the cited reference does not disclose each element of independent Claims 1 and 17, either expressly or inherently.

With respect to Claims 1 and 17, Appellant claims a method where commands are communicated from a telephone to a voice message system to control the playback of a message. More specifically, Appellant claims a method having a combination of steps, including the steps of "repositioning the voice message upon receipt of a start command to begin repositioning, wherein the start command is communicated from a telephone to the voice message system," and "stopping the repositioning upon receipt of a stop command initiated by the user to stop the repositioning, wherein the stop command is communicated from the telephone to the voice message system." These claimed steps and the steps for providing repositioning feedback are not disclosed nor are they inherent in the relied-upon reference.

The Examiner asserts that the Greco et al. patent document inherently discloses a method where a playback command is communicated from a telephone to a voice message system. (See final Office Action, page 3, lines 1-2.) More specifically, the Examiner asserts that a method of listening to a message over a telephone inherently discloses a method where a playback command is communicated from a telephone to a voice message system. Appellant respectfully submits that this assertion is incorrect, as the Greco et al. disclosure of the computerized message device does not inherently or explicitly disclose a method where message playback commands are communicated from a telephone to a voice message system.

Greco et al. focus on the voicemail system that provides message playback controls on a graphical user interface. During playback of the messages, a user can listen to messages on a telephone or a set of computer speakers. Although Greco et al. disclose a system where a user

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can use a telephone 54 to listen to messages on the telephone 54, the telephone 54 is only used to allow the caller to listen to the messages. (See. col. 5, lines 31-32 of the relied-upon patent document.)

There is no inherent disclosure of any function where a playback command is communicated from the telephone. Greco et al. do not even disclose a structure that will support such a function. Instead, Greco et al. specifically state that control buttons are shown on a computer display when a user is listening to the messages. (See col. 5, lines 37-55 of the Greco et al. patent document.) Greco et al. continue to explain how the system allows a user to control functions of the voicemail system by entering play, fast forward, rewind, and stop commands via the graphical user interface. (See col. 3, lines 33-40 of the Greco et al. patent document.)

Given that the playback control commands are exclusively communicated through the graphical user interface, under any interpretation of the Greco et al. patent document, it is clear that there is no inherent or explicit disclosure of a method where "start" or "stop" commands are "communicated from a telephone to the voice message system." Since there is no explicit or inherent disclosure of a command being communicated from the telephone to the computer, Appellant respectfully submits that the rejection of Claims 1 and 17, and that of the respective dependent claims, is improper. Therefore, the Board is respectfully requested to direct the Examiner to withdraw the rejection under 35 U.S.C. § 102(d).

B. 35 U.S.C. § 103(a) Greco et al./Carson Rejection

1. Claims 6 and 22

Appellant respectfully submits that the Examiner has failed to establish proper motivation for combining Carson with Greco et al. In particular, U.S. case law requires an Examiner to identify motivation as to why one of ordinary skill in the art would combine two prior art

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references. The source of motivation may originate from the references themselves, the nature of the problem being solved by the references, or the knowledge of one of ordinary skill in the art.

Appellant directs the Examiner's attention to two cases directed by the Court of Appeals for the Federal Circuit (CAFC), *In re Dembiczak*, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999) and *In re Kotzab*, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). Both of these cases set forth very rigorous requirements for establishing a *prima facie* case of obviousness under 35 U.S.C. § 103(a). To establish obviousness based on a combination of elements disclosed in the prior art, there must be some motivation, suggestion, or teaching of the desirability to make the specific combination that was made by the applicant. The motivation, suggestion or teaching may come explicitly from statements of the prior art, the knowledge of one of ordinary skill in the art, or in some cases, the nature of the problem to be solved. *See Dembiczak*, 50 U.S.P.Q.2d at 1614 (Fed. Cir. 1999). In *Kotzab*, the CAFC held that even though various elements of the claimed invention were present (in two separate embodiments of the same prior art reference), there was no motivation to combine the elements from the separate embodiments, based on the teachings in the prior art.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the Examiner must provide particular findings as to why the two pieces of prior art are combinable. *See Dembiczak*, 50 U.S.P.Q.2d at 1617. Broad conclusory statements standing alone are not "evidence."

In order to provide motivation for combining Carson and Greco et al., on page 5, paragraph 3, of the final Office Action dated April 15, 2003, the Examiner asserts:

It would have been obvious to one skilled at the time the invention was made to modify Greco et al[.] to have the supervisory signal as a vibratory signal as taught by Carson such that the modified system of Greco et al[.] would be able to support the vibratory signal to the system users.

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Appellant respectfully submits that this is exactly the type of broad conclusory statement that was held to be insufficient as motivation in both *Dembiczak* and *Kotzab*. Accordingly, for this reason alone, Appellant respectfully submits that the 35 U.S.C. § 103(a) rejection of Claims 6 and 22 should be withdrawn.

C. 35 U.S.C. § 103(a) Larson et al./Greco et al. Rejection

1. Claims 8-10 and 24-26

Similar to the rejection of Claims 6 and 22, the Examiner has failed to establish proper motivation for combining Larson et al. with Greco et al. The case law discussed in conjunction with Claims 6 and 22 applies to the rejection of Claims 8-10 and 24-26. However, for the sake of brevity, the case law references have not been repeated hereinafter. Nonetheless, the Board is respectfully requested to refer to the discussion of *Dembiczak* and *Kotzab*, hereinabove, if required.

In order to provide motivation for combining Larson et al. and Greco et al., on page 6, first paragraph, of the final Office Action dated April 15, 2003, the Examiner asserts:

It would have been obvious to one skilled at the time the invention was made to modify Greco et al[.] to add the supervisory signal operates [*sic*] at variable intervals as taught by Larson et al[.] such that the modified system of Greco et al[.] would be able to support the variable intervals of the system users.

Once again, Appellant respectfully submits that this is exactly the type of broad conclusory statement that was held to be insufficient as motivation in both *Dembiczak* and *Kotzab*. Accordingly, the Board is respectfully requested to instruct the Examiner to withdraw the indicated rejection under 35 U.S.C. § 103(a).

D. Dependent Claims Not Specifically Discussed

As to those claims not specifically discussed in the argumentation herein, Appellant respectfully submits that these claims are allowable at least due to their dependence upon an

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allowable independent claim. Therefore, the Board is respectfully requested to instruct the Examiner to withdraw the rejections of these claims.

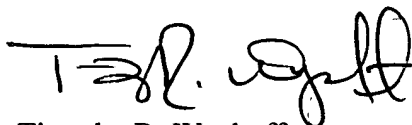
IX. CONCLUSION

For the reasons set forth hereinabove, it is respectfully submitted that all of the claims of the instant application are allowable. Thus, favorable reconsideration and reversal of the Examiner's rejections of Claims 1-32 by the Honorable Board of Patent Appeals and Interferences are respectfully requested.

Should there be any outstanding matters which need to be resolved in the instant application, the Board is respectfully requested to contact the undersigned at the telephone number provided.

Respectfully submitted,

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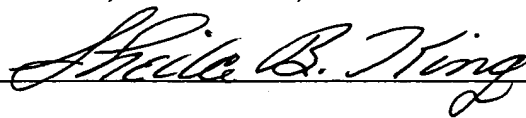


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ATTACHMENT: APPENDIX - CLAIMS ON APPEAL

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APPENDIX - CLAIMS ON APPEAL

1. A voice message repositioning method for a voice message system that stores voice messages for a user of the system and provides feedback to the user regarding the progress of repositioning the playback of a voice message, the repositioning method comprising the steps of:

(a) repositioning the voice message upon receipt of a start command to begin repositioning, wherein the start command is communicated from a telephone to the voice message system;

(b) providing feedback to the user via a supervisory signal during repositioning; and

(c) stopping the repositioning upon receipt of a stop command initiated by the user to stop the repositioning, wherein the stop command is communicated from the telephone to the voice message system.

2. The method of Claim 1, wherein the start command to begin repositioning is provided by the user of the voice message system and includes a voice command, a digital command, or a keyed command.

3. The method of Claim 1, wherein the stop command to stop repositioning is provided by the user of the voice message system and includes a voice command, a digital command, or a keyed command.

4. The method of Claim 1, wherein the supervisory signal is an aural signal.

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5. The method of Claim 1, wherein the supervisory signal is a visual signal.
6. The method of Claim 1, wherein the supervisory signal is a vibratory signal.
7. The method of Claim 1, wherein the supervisory signal operates at fixed intervals.
8. The method of Claim 1, wherein the supervisory signal operates at variable intervals.
9. The method of Claim 8, wherein the variable intervals are based on the length of the voice message.
10. The method of Claim 8, wherein the variable intervals are based on the position in the voice message.
11. The method of Claim 1, wherein the repositioning comprises fast-forwarding.
12. The method of Claim 11, further comprising the steps of stopping the repositioning substantially at the end of the message and playing the message substantially preceding the end.

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13. The method of Claim 12, further comprising the steps of providing a signal that the end of the message has been reached.

14. The method of Claim 1, wherein the repositioning comprises rewinding.

15. The method of Claim 14, further comprising the steps of stopping the repositioning substantially at the beginning of the message and playing a message envelope before playing the message from the beginning.

16. The method of Claim 15, further comprising the steps of providing a signal indicating that the beginning of the message has been reached.

17. A voice message repositioning system that stores voice messages for a user of the system and provides feedback to the user regarding the progress of repositioning the playback of a voice message, the system comprising:

- (a) a processor; and
- (b) a memory coupled to the processor, the memory storing program code implemented by the processor for:
 - (i) repositioning the voice message upon receipt of a start command to begin repositioning, wherein the system is adapted for receiving the start command from a telephone;
 - (ii) providing feedback to the user via a supervisory signal during repositioning; and

(iii) stopping the repositioning upon receipt of a command by the user to stop repositioning, wherein the system is adapted for receiving the stop command from the telephone.

18. The voice message repositioning system of Claim 17, wherein the start command to begin repositioning is provided by the user of the voice message system and includes a voice command, a digital command, or a keyed command.

19. The voice message repositioning system of Claim 17, wherein the stop command to stop repositioning is provided by the user of the voice message system and includes a voice command, a digital command, or a keyed command.

20. The voice message repositioning system of Claim 17, wherein the supervisory signal is an audio signal.

21. The voice message repositioning system of Claim 17, wherein the supervisory signal is a visual signal.

22. The voice message repositioning system of Claim 17, wherein the supervisory signal is a vibratory signal.

23. The voice message repositioning system of Claim 17, wherein the supervisory signal operates at fixed intervals.

24. The voice message repositioning system of Claim 17, wherein the supervisory signal operates at variable intervals.

25. The voice message repositioning system of Claim 24, wherein the variable intervals are based on the length of the voice message.

26. The voice message repositioning system of Claim 24, wherein the variable intervals are based on the position in the voice message.

27. The voice message repositioning system of Claim 17, wherein the repositioning comprises fast-forwarding.

28. The voice message repositioning system of Claim 27, wherein the program code when executed by the processor further:

- (a) stops the repositioning substantially at the end of the message; and
- (b) plays the message preceding the end.

29. The voice message repositioning system of Claim 28, wherein the program code when executed by the processor further provides a signal indicating that the end of the message has been reached.

30. The voice message repositioning system of Claim 17, wherein the repositioning comprises rewinding.

31. The voice message repositioning system of Claim 30, wherein the program code when executed by the processor further:

- (a) stops the repositioning substantially at the beginning of the message; and
- (b) plays a message envelope before playing the message from the beginning.

32. The voice message repositioning system of Claim 31, wherein the program code when executed by the processor further provides a signal indicating that the beginning of the message has been reached.

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